

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN WILEY & SONS, INC.,	:	
Plaintiff, Counterclaim Defendant,	:	11-CV-05454 (KPF)
	:	ECF Case
v.	:	
	:	
DRK PHOTO,	:	
Defendant, Counterclaimant.	:	
-----X	:	

SUPPLEMENTAL DECLARATION OF ROBERT PENCHINA

ROBERT PENCHINA, pursuant to 28 U.S.C. § 1746, states:

1. I am a member of Levine Sullivan Koch & Schulz, LLP, counsel for John Wiley & Sons, Inc. in the above-captioned action. I respectfully submit this declaration in connection with Wiley's Motion for Summary Judgment.

2. Attached as Exhibit A hereto is a true and correct copy of an excerpt from Claimant DRK Photo's Response Memorandum Opposition to Respondent John Wiley & Sons, Inc.'s Motion for Summary Judgment, submitted by DRK in arbitration captioned *DRK Photo v. John Wiley & Sons, Inc.*, AAA Case No. 76 143 00193 11 (the "Related Arbitration").

3. Attached as Exhibit B hereto are true and correct copies of screen captures I made of pages accessible on the websites of Visuals Unlimited, Inc. ("VUI") and DRK Photo, which pages offer for licensing to the public photographs created by and bearing copyright notices in the name of Barbara Gerlach. Each page of Exhibit B contains two screen captures, the first depicting a page from VUI's website and the second depicting a page from DRK's website offering the same photo.

4. Attached as Exhibit C hereto is a true and correct copy of the "Copyright Assignment, Accrued Causes of Action, and Litigation Agreement" signed by Barbara Gerlach on October 24, 2008, which agreement purports to grant to DRK Photo "all copyright and complete

legal title” in Ms. Gerlach’s photos that are “included in DRK’s collection,” that was produced in discovery by DRK.

5. Attached as Exhibit D hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by Barbara Eddy-Gerlach on June 13, 2013, which agreement purports to grant to VUI “co-ownership of all copyrights” in Ms. Gerlach’s photos that are “included in Company’s digital collection,” that was produced by VUI in litigation between VUI and Wiley.

6. Attached as Exhibit E hereto are true and correct copies of screen captures I made of pages accessible on the websites of Minden Pictures, Inc. (“Minden”) and DRK Photo, which pages offer for licensing to the public photographs created by and bearing copyright notices in the name of Michael Fogden. Each page of Exhibit E contains two screen captures, the first depicting a page from Minden’s website and the second depicting a page from DRK’s website offering the same photo.

7. Attached as Exhibit F hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by Michael Fogden on July 8, 2008, which agreement purports to grant to DRK Photo “all copyright and complete legal title” in Mr. Fogden’s photos that are “included in DRK’s collection,” that was produced in discovery by DRK.

8. Attached as Exhibit G hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by Michael Fogden on February 24, 2010, which agreement purports to grant to Minden “co-ownership of all copyrights” in Mr. Fogden’s photos that are “included in [Minden’s] collection,” that was submitted in litigation between Minden and Pearson Education, Inc.

9. Attached as Exhibit H hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by John Eastcott on July 1, 2008, which agreement purports to grant to DRK Photo “all copyright and complete legal title” in Mr. Eastcott’s photos that are “included in DRK’s collection,” that was produced in discovery by DRK.

10. Attached as Exhibit I hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by John Eastcott on February 8, 2010, which agreement purports to grant to Minden “co-ownership of all copyrights” in Mr. Eastcott’s photos that are “included in [Minden’s] collection,” that was submitted in litigation between Minden and Pearson Education, Inc.

11. Attached as Exhibit J hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by Anup Shah on October 1, 2008, which agreement purports to grant to DRK Photo “all copyright and complete legal title” in Mr. Shah’s photos that are “included in DRK’s collection,” that was produced in discovery by DRK.

12. Attached as Exhibit K hereto is a true and correct copy of the “Copyright Assignment, Accrued Causes of Action, and Litigation Agreement” signed by Anup Shah on May 25, 2011, which agreement purports to grant to Minden “co-ownership of all copyrights” in Mr. Shah’s photos that are “included in [Minden’s] collection,” that was submitted in litigation between Minden and Pearson Education, Inc.

13. Attached as Exhibit L hereto is a true and correct copy of the Declaration of Stephen J. Krasemann, dated August, 30, 2012, that was submitted by DRK in the Related Arbitration.

14. Attached as Exhibit M hereto is a true and correct copy of an email exchange between Amanda Bruss, Esq. and Joseph Barker, Esq. relating to “Wiley Request No. 2,” among

other subjects, that took place on May 8 and 9, 2012. Also attached as part of Exhibit M hereto is a true and correct copy of the joint letter from Christopher Seidman, Esq. and Joseph Barker, Esq. to arbitrator Brett L. Dunkelman, Esq., dated May 16, 2012, which on the third page thereof gives DRK's position with respect to "DRK's Response to Wiley's Document Request 2."

15. Attached as Exhibit N hereto are true and correct copies of excerpts of the transcript of the Deposition of Michael Collier conducted in this case on March 18, 2013.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed at: New York, New York

Dated: July 11, 2013


Robert Penchina